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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,582	03/29/2004	Shawn P. Mulligan	00757.P1US	2065
28778	7590	05/18/2006	EXAMINER	
JOHNSON & STAINBROOK, LLP 3558 ROUND BARN BLVD., SUITE 203 SANTA ROSA, CA 95403			LHYMN, EUGENE	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 05/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/811,582	Applicant(s) MULLIGAN, SHAWN P.	
	Examiner Eugene Lhymn	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 6, 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Credle (US 5676251). With respect to claim 1, Credle discloses the following:

- Shell member having a pair of shell halves (Fig. 2, items 16 & 12) having a top, base, and side portions
- Stacking means (Fig. 3, items 20 & 34)
- Lateral nesting means, as shown in Fig. 3 wherein the flanges of each respective container provides lateral nesting means as shown
- Hinge means (Fig. 1, item 14)
- Fastener means, as shown in Fig. 1 wherein the inner surface of the flange provides fastener means

Moreover, with respect to the limitation “for a propane gas tank” it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Therefore, the container of Credle can clearly hold a propane tank, since propane tanks come in various sizes, and thus could be stored in the container of Credle.

With respect to claim 3, Credle discloses the hinge means comprising a living hinge (Col 3, Lines 10-15).

With respect to claim 6, Credle discloses the lateral nesting means comprising a surface structure on one of the side portions, wherein the outwardly extending flange of each respective container is a surface structure.

With respect to claim 8, Credle discloses at least one of the side portions having a planar surface (Fig. 1).

With respect to claims 9-10, Credle discloses the shell member tapering inwardly at the top and bottom (Fig. 1).

3. Claims 1, 4, 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Nash (US 6732880 B1). With respect to claim 1, Nash discloses the following:

- Shell member (Fig. 2, items 4 & 6)
- Stacking means, as shown in Fig. 2 wherein said stacking means is the downwardly extending flange of the base
- Lateral nesting means, wherein since the containers can be stacked, or nested, they can also be laterally nested if the container system were rotated such that said downwardly extending flange were extending horizontally, thereby providing lateral nesting means
- Hinge means (Fig. 2, item 5)

- Fastener means (Fig. 2, item 12)

Moreover, with respect to the limitation “for a propane gas tank” it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Therefore, the container of Nash can clearly hold a propane tank, since propane tanks come in various sizes, and thus could be stored in the container of Nash.

With respect to claim 4, Nash discloses the fastener means comprising a buckle (12).

With respect to claim 5, Nash discloses the stacking means being an interior rim (Fig. 2).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nash in view of Guth (US 3997072). With respect to claim 2, Nash discloses the claimed invention except for the top portion having an opening defining a handle. However, Guth teaches a refuse container having such a handle (Fig. 1), thereby providing an

alternate handle means. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add an opening to the top portion of Nash as taught by Guth so as to provide an alternate handle means.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nash in view of Sparling (US 4685565). With respect to claim 7, Nash discloses the claimed invention except for the lateral nesting means being ribs on one of the side portions. However, Sparling teaches a plurality of cylindrical containers having ribs disposed on their side portions for the purpose of lateral nesting, which improves storage capability. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add ribs to the sidewalls of Nash as taught by Sparling so as to provide lateral nesting means which will improve storage capability of the containers.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See-PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWT 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER